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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,)	Div. 6
)	
vs.)	DEFENDANT'S OPPOSITION TO
)	STATE'S RESPONSE TO
STEVEN CARROLL DEMOCKER,)	DEFENDANT'S POSITION ON
)	HARTFORD EVIDENCE AND
Defendant.)	POSSIBLE STIPULATION
)	
)	
)	UNDER SEAL

Steven DeMocker, by and through counsel, hereby respectfully requests that the Court strike or deny the State's Response to Defendant's Position on Hartford Evidence and Possible Stipulation. This request is based on the due process clause, the Eighth Amendment and Arizona counterparts, Arizona Rules of Evidence, Arizona Rules of Criminal Procedure and the following Memorandum of Points and Authorities.

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DIVISION 6

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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 On July 7-8, the State late disclosed over 1,100 pages of evidence, as well as
5 multiple CDs and witnesses relating to Hartford Insurance. Also on July 9, three
6 months after the trial commenced, the State indicated for the first time that it intended to
7 call Mr. DeMocker's counsel, John Sears, to testify about the issue of the Hartford Life
8 Insurance policies. The Court ordered the parties to simultaneously file their positions
9 on the Hartford Life Insurance issues at noon on July 12. The defense filed its position
10 as ordered. The State did not file its position. Instead, the State filed under seal a
11 Motion for Determination of Counsel with Chronology of Events and Exhibits. On July
12 13, the Court set a hearing on July 14 to address these issues. During this hearing, the
13 State orally proposed a stipulation related to the Hartford Insurance evidence. In
14 response, on July 15 the Defense filed a Defense Position on Hartford Evidence and
15 Possible Stipulation.

16 On July 16, the Court held another hearing and ruled that with the possible
17 exception of issues related to the "disclaimer," the issues related to the Hartford
18 Insurance information is precluded based on Arizona Rules of Evidence 403 and 404(b).
19 The Court noted that resolution of the Hartford Insurance issue was related to the issue
20 of the determination of counsel as it may affect counsel's ability to proceed with
21 representation and counsel as a possible witness. The resolution of the issue was also
22 related to the Court's determination of an ability to proceed with trial which had been
23 on hold since Judge Lindberg's collapse on June 17. After determination of these
24 issues, the Court made a determination as required under Arizona Rule of Criminal
25 Procedure 19.5 that trial could proceed and would commence on July 21.

On July 16, the Court also ordered the State to advise what matters it was seeking reconsideration of by July 19, 2010, and advised that it would adopt a version of Arizona Rule of Civil Procedure 7, which does not require a response from a party to a Motion to Reconsideration without a review and request for response from the Court. The Court indicated it would not be reconsidering rulings unless an error of law was alleged. The State filed its notice of matters for reconsideration on Monday, July 19 and listed both the Hartford Insurance issues (decided only the Friday before) and the “anonymous email.”¹

Instead of filing a Motion to Reconsider on the Hartford Insurance issues and even though the Court had already ruled on the Hartford Insurance issues, on July 19 the State filed a request for time to file a response to Defense Position on Hartford Evidence.² The Court did not grant this request. Ignoring this, the State filed its “Response” on July 20.

The State's Response raises no new issues, is improperly a disguised motion to Reconsider and it alleges no mistake of law. Instead, the State's Response simply repeats arguments earlier made and rejected by this Court.

Given that the State's filing is a Motion to Reconsider, improperly filed and captioned, and that the Court did not grant the State's request to file a response, the Defense will not file any substantive reply to this unless ordered by the Court to do so pursuant to the Court's prior orders.

CONCLUSION

¹ The State filed its Motion to Reconsider Denial of Motion in Limine to Preclude Anonymous Email on July 15, 2010.

² This pleading is confusingly captioned by the State as “Defense Position on Hartford Evidence and Possible Stipulation, Filed July 15, 2010.”

1 Defendant Steven DeMocker, by and through counsel, hereby requests that this
2 Court strike the State's pleading captioned "State's Response to Defendant's Position
3 on Hartford Evidence and Possible Stipulation" or, in the alternative, deny it.

4 DATED this 23 day of July, 2010.

5
6 By: 

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16 **ORIGINAL** of the foregoing hand delivered for
17 filing this 22 day of July, 2010, with:

18 Jeanne Hicks
19 Clerk of the Superior Court
120 S. Cortez
Prescott, AZ 86303

20 **COPIES** of the foregoing hand delivered this
21 this 22 day of July, 2010, to:

22 The Hon. Warren R. Darrow
23 Judge Pro Tem B
120 S. Cortez
24 Prescott, AZ 86303

25 Joseph C. Butner, Esq.
26 Prescott Courthouse basket
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